The Case for Unequal Animal Rights

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I argue that the equal rights views of Tom Regan and Evelyn B. Pluhar must be rejected because they have unacceptable consequences. My objection is similar to one made in the literature by Mary Anne Warren, but I develop it in more detail and defend it from several plausible responses that an equal rights theorist might make. I formulate a theory, a moderate form of perfectionism, that makes a value distinction between moral agents and moral patients according to which although both have rights, these rights are not equal. This theory avoids the unacceptable consequences of the equal rights view and is immune to the marginal cases arguments that typical full-personhood theories succumb to. This moderate perfectionism generates an obligation for people to be vegetarians (in most cases) and to severely curtail animal experimentation.

I. INTRODUCTION

Tom Regan's influential *The Case for Animal Rights* and Evelyn B. Pluhar's recent *Beyond Prejudice, The Moral Significance of Human and Nonhuman Animals* make a strong case for the view that animals[1] have rights equal to human rights.[2] I find myself persuaded by their arguments that nonhuman animals have a much higher level of moral significance than is normally recognized.[3] Nevertheless, I argue that the equal rights view has unacceptable consequences, and so must be rejected. Instead, I present a moderate form of perfectionism based on the difference between moral agents and moral patients.

This moderate theory recognizes the moral significance of animals and has implications in line with many who are sympathetic to the animal rights movement. For instance, it does require us (in normal circumstances) to be vegetarians. However, this theory does not suffer from the objection that I present to the equal rights view. Finally, I defend this theory, a modified version of what Regan calls "pernicious perfectionism," from the objections that Regan and Pluhar make against similar theories.

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[1] Not all animals, but at least all mammals over one year in age. This stipulation has no effect on the rest of the paper.

[2] Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983). Evelyn B. Pluhar, *Beyond Prejudice: The Moral Significance of Human and Nonhuman Animals* (Durham: Duke University Press, 1995).

II. THE EQUAL RIGHTS THEORY I: THE ELEMENTS

In order for the objection to the equal rights theory to be intelligible, I present the key elements of Regan's rights theory, though without any of his justifications for the various parts. The first distinction is between subjects-of-a-life and others. Individuals that possess beliefs, desires, perceptions, memories, a sense of their own future, an emotional life, preference interests, sensations of pain and pleasure—Regan dubs these individuals "subjects-of-a-life."[4]

Subjects-of-a-life can be divided into two main classes: those that are moral agents and those that are moral patients. Moral agents are those subjects-of-a-life who can reason morally and act on those reasons. Thus, we hold them morally accountable for their unconstrained actions. Adult humans are paradigmatic moral agents. Moral patients, on the other hand, cannot reason morally or act from moral reasons. Nevertheless, because they are subjects-of-a-life, they do have desires and beliefs, an emotional life, and a sense of the future. Normal adult mammals, as well as young human children and some mentally incapacitated adult humans, are moral patients.[5]

Regan proposes the inherent value postulate: all subjects-of-a-life possess inherent value, and each has equal inherent value to each other, whether moral agent or moral patient.[6] Because of the inherent value of each subject-of-a-life, there is a direct duty of justice to all subjects-of-a-life. The duty of formal justice is that we must give individuals their due. The inherent value postulate is a key element in the substantive theory of what individuals are due, as stated by the respect principle: what subjects-of-a-life are due is to be treated in ways that respect their inherent value.[7]

In order to properly respect individuals' inherent value, we must recognize certain rights. Regan follows John Stuart Mill's general view about rights: "To have a right, then, is, I conceive, to have something society ought to defend me in the possession of."[8] He elaborates on this statement by following Joel Feinberg's analysis[9] of rights as valid claims (1) to something and (2) against some moral agent(s).[10] Here are the three basic rights that Regan recognizes:

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[3] I do not get into the arguments here for two reasons. First, it has been done more thoroughly than I could do justice to here in Regan's and Pluhar's work, and second, this paper is intended for an audience that is already receptive to the position that animals are worthy of much more serious consideration than has been previously thought.

[4] Regan, *The Case for Animal Rights*, p. 243.

[5] Ibid., pp. 151–52.

[6] Ibid., p. 240.

[7] Ibid., p. 248.

[8] John Stuart Mill, *Utilitarianism* (Indianapolis: Hackett Publishing, 1979), p. 52. Cited in Regan, *The Case for Animal Rights*, p. 269.

[9] Joel Feinberg, "The Nature and Value of Rights," *Journal of Value Inquiry* 4 (Winter 1970): 243–57.

[10] Regan, *The Case for Animal Rights*, pp. 272–73.

(1) The right not to be harmed.
(2) The right to aid when our rights are being violated.
(3) The right of innocents to self-defense.[11]

The second condition of the rights analysis (above) rules out any claim that does not involve a moral agent in the "transgressor" role. For instance, I have no right against a tree that it should refrain from falling on my house. Nor do I have any right against a wild animal that it not attack me. If a wild animal should attack me I have the right of self-defense; nevertheless, that animal does not violate my rights by attacking me.

Situations where some rights must be overridden no matter what we choose—rights conflicts—are handled by the miniride and worse-off principles.

> *The Miniride Principle* (minimize overrides principle): Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many.[12]

> *The Worse-off Principle:* Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many.[13]

In addition to these three basic rights and two principles governing rights conflicts, Regan also espouses the following liberty principle.

> *The Liberty Principle:* Provided that all those involved are treated with respect, and assuming that no special considerations obtain, any innocent individual has the right to act to avoid being made worse-off even if doing so harms other innocents.[14]

With the key elements of Regan's theory in place, it is now possible to present the objection to it.

III. THE EQUAL RIGHTS THEORY II: A WOLF IN SHEEP'S CLOTHING

Since the objection that I give is based on an objection that Regan himself considers and rejects, it is worthwhile to review that objection and Regan's

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[11] Ibid., pp. 276–80.
[12] Ibid., p. 305.
[13] Ibid., p. 308.
[14] Ibid., p. 331.

response before giving a strengthened version. The objection is that it is a mistake to think that all subjects-of-a-life have the three basic rights listed above because that view will lead to inescapable rights conflicts.

> If sheep have rights, it is claimed, then these are violated by wolves [who hunt them]. . . . But if we have a duty of assistance to animals to stop those who violate their rights, then are we not duty-bound to stop the wolf in his tracks, so to speak, and protect the sheep? However, were we to do this, the wolf could hardly be the beneficiary, since he would be denied necessary sustenance. Were we to carry out our duty to assist the sheep against the wolf's violations of the sheep's rights, we could only succeed in violating the wolf's rights, whereas if we allow the wolf to violate the sheep's rights, we fail to do what we should to assist the sheep. *Whatever* we do, therefore, we stand to be morally condemned, which is absurd.[15]

The objection is that if both nonhuman hunters and nonhuman prey have rights, then those rights will conflict every time a wolf hunts its dinner, a tiger its dinner, or a fox its dinner, and so on. Now, it is important to notice that rights conflicts, by themselves, are no objection to Regan's theory. He provides two principles (the miniride and the worse-off) for resolving them. However, if we were to apply those principles in the wolves case, then that would imply that we have some kind of duty to perform rampant and continuous interference in nature. Such a duty would result in a major redistribution of our efforts and money, and even then be greatly unsuccessful. But, of course, the objection implies, we have no such duty to interfere with nature.

Regan clearly understands the force of this objection, for he does not mention resolving the rights conflicts between the wolves and sheep with his principles. Instead, he claims that the wolves case fails because it overlooks a crucial fact: wolves are not moral agents, so therefore they cannot have duties to anyone. According to the analysis of rights as valid claims presented above, a necessary condition for the sheep having rights against the wolves is that the wolves have duties to the sheep. Regan points out, however, that since wolves cannot have a duty to refrain from harming sheep, the sheep have no right that the wolves should refrain from harming them. Therefore, because no rights of the sheep are violated, we have no prima facie duty to assist the sheep against the wolves. So, according to Regan, the wolf may hunt the sheep and we need not condemn ourselves for not interfering.[16]

Regan's reply is correct as far as it goes, but it overlooks a serious objection waiting in the wings. It is true that since the wolves are not moral agents, that this case is not a rights conflict case. However, it follows from Regan's reasoning that not only do the sheep have no rights against the wolves, but that the wolves have rights against us not to interfere. We humans are moral agents, and so we do have duties, and in particular, the duty not to harm other animals.

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[15] Ibid., pp. 284–85.
[16] Ibid., p. 285.

If it would harm the wolves to interfere with their hunt (and Regan seems to grant this point), then not only is there no obligation to help the sheep, there is a positive obligation to refrain from helping the sheep. This result may not be a problem when considering nonhuman animals, but according to Regan, humans have no more inherent value than nonhuman animals, and this fact leads to the decisive objection.

Suppose that instead of sheep, the wolves are hunting a couple of hapless hikers. Like the sheep, suppose that these hikers are not equipped to scare off the wolves or defend themselves. They will be killed unless we intervene. If we follow Regan's reasoning, then not only do we have no duty to intervene, we actually have a duty to refrain from intervening. We must let the hikers be killed or we will violate the rights of the wolves because even though the hikers are people, that fact does not affect the wolves' rights in this case. The wolves have no duties to the hikers because the wolves are not moral agents. Thus, if we were to intervene, we would be violating the rights of the wolves not to be harmed. This conclusion is clearly wrong, however, for we have not only the right, but we also have the duty to save the hapless hikers (assuming we can do so without seriously putting ourselves at risk). It is a mistake to attribute basic rights to animals and humans equally.[17]

Note that it will not do to point out that because the hapless hikers are part of our community, we therefore have an obligation to help them if they ask us for help with their self-defense against innocent threats. Such a response begs the question at hand, which concerns just which individuals are legitimate members of the moral community. According to Regan, all subjects-of-a-life are part of the moral community. Thus, if we have an obligation to help the hapless hikers with their self-defense, then we equally have an obligation to help the sheep with their self-defense. These obligations generate the problem of the original wolves case all over again.

Note also that neither the miniride principle nor the worse-off principle has any application to this case. Those principles only apply when we are faced with rights-conflict cases. The hapless hikers case is not such a situation because if we let the wolves kill the hikers no rights need to be overridden.

However, there are two other kinds of possible attempts to rescue Regan's view from the hapless hikers objection. According to the first kind, it could be claimed that since the wolves' right not to be harmed is not absolute, there are legitimate occasions when we may override that right. The difficulty for this response is to show that the overriding considerations provide an obligation to interfere in the hiker case, but not in the sheep case. According to the second

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[17] An objection like this one has been made by Mary Anne Warren, in "Difficulties with the Strong Animal Rights Position," *Between the Species* 2, no. 4 (Fall 1987): 163–73, and again in her *Moral Status: Obligations to Persons and Other Living Things* (Oxford: Oxford University Press, 1997), pp. 112–13. However, she does not consider the replies that an equal rights theorist can make, and provides a very different and incompatible solution to the one I propose here.

kind of solution, it might be thought that there is another obvious right that Regan does not mention, but that he could appeal to, in order to save the humans. Again, however, the difficulty is to show that this right provides an obligation to save the humans but not the sheep. I examine two attempts of the first kind, as well as one of the second kind, and argue that none of them succeed.

IV. IN DEFENSE OF EQUAL RIGHTS I: ALLOWABLE HARM TO INNOCENT THREATS

The three basic rights that Regan presents above are not absolute rights; they are *prima facie* rights. They can be justifiably overridden in certain cases. However, there must be very good reasons to override them. Regan puts it this way:

> To say this right [the right not to be harmed] is a prima facie right is to say that (1) consideration of this right is always a morally relevant consideration, and (2) anyone who would harm another, or allow others to do so, must be able to justify doing so by (a) appealing to other valid moral principles and by (b) showing that these principles morally outweigh the right not to be harmed in a given case.[18]

Regan presents four justifications for such overridings: (a) self-defense by the innocent, (b) punishment of the guilty, (c) cases of the innocent being used as shields, and (d) cases of innocent threats. It is this last kind of case (d) that someone might claim saves Regan from the hapless hikers objection.

Suppose a young child picks up a loaded gun and starts firing it at us. The child does not know what he is doing—he is too young to be a moral agent. This is an example of an innocent threat. However, Regan points out that we have the right of self-defense, even if that requires us to seriously harm or kill the child. Of course, we must try every other option that we can reasonably try, but if all else fails, we are permitted to kill the child to save ourselves, even though the child is innocent.[19]

The first attempted solution, then, is to apply this reasoning to the wolves case. The wolves are an innocent threat, but we have the right to self-defense, even if it requires harming them. Thus, we can override their right not to be harmed in order to save the hapless hikers.

This solution, however, will not work, for Regan discusses this example as a threat to us, and that is fundamentally different from the case of the hapless hikers. In that case, only the hikers are threatened, not us. We would not be harmed if the hikers were killed. Furthermore, note that Regan's justification of harm to innocent threats does seem to be one of self-defense. He writes:

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[18] Regan, *The Case for Animal Rights*, p. 287.
[19] Ibid., p. 293.

> . . . [S]ince we are innocent of any relevant wrongdoing, since we *are* seriously threatened by the gun-wielding child . . . it cannot be wrong to do what will harm the child. . . .[20]

In any case, there is a deeper problem with this response. Since humans and nonhuman animals are considered equal in Regan's theory, any innocent-threat consideration that would allow or require us to save the hiker from the wolves would also allow or require us to save the sheep from the wolves. But it seems clear that while we do have an obligation to save the hapless hiker, we do not have a corresponding obligation to save the sheep (or whatever prey wolves normally hunt).

There is a good reason why the combination of the sheep and hikers cases presents such a difficult dilemma for Regan's theory. Because he postulates equal inherent value for both moral patients and moral agents, moral patients have the same basic rights as moral agents. Yet, moral patients do not have the same duties as agents. This asymmetry forces humans to take care not to harm wolves while allowing them to harm us without forfeiting their rights. As I mentioned above, this asymmetry blocks appeal to the miniride or worse-off principles. Those principles are only used when we are forced to override someone's rights, and in the wolves cases we do not override anybody's rights when we let the wolves proceed with dinner.

Thus, any innocent-threat consideration that would require us to save the hikers would, when equally applied to animals, require us to save the sheep. Thus, the first attempted defense of Regan's theory fails.

It would appear that because of Regan's postulated equal inherent value of moral agents and moral patients, any other consideration that would allow the wolves to kill the sheep would, when equally applied to people, allow the wolves to kill the hikers. However, this is not the case, according to Regan. Although he claims that all animals have equal inherent value, he does not claim that all their experiences are equal in value. This distinction provides another response to the wolves cases. I examine that defense in the next section.

V. IN DEFENSE OF EQUAL RIGHTS II: THE HARM OF DEATH

Although Regan postulates equal inherent value for moral patients and moral agents, he makes it clear that he thinks that the harm of death to a moral agent is greater than the harm of death to a moral patient. This distinction comes into view when Regan considers the lifeboat dilemma.

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[20] Ibid. However, it is possible that this use of "we" is not, after all, intended to rule out our coming to the defense of others in similar situations. Ultimately, I do not think that this interpretation makes sense, but even if it does, the next objection still applies.

> Imagine five survivors are on a lifeboat. Because of limits of size, the boat can only support four. All weigh approximately the same and would take up approximately the same amount of space. Four of the five are normal adult human beings. The fifth is a dog. One must be thrown overboard or else all will perish. . . . no reasonable person would suppose that the dog has a "right to life" that is equal to the humans'.[21]

In this case, someone's right not to be harmed must be overridden. Regan's solution is to claim that the harm of the dog's death is less than the harm of any human's death. In such rights-conflict cases, the worse-off principle directs us to override the rights of those who would be least harmed. The dog is least harmed, so we must throw the dog overboard.[22]

The hapless hikers case is not a rights-conflict case, so the worse-off principle does not apply. However, it could be argued that the harm of death of the hapless hikers is so great that it outweighs the wolves' right not to be harmed. The passage I used from Regan (above, sec. 4, n. 18) seems to indicate that it is not necessary for there to be rights conflicts in order for rights to be overridden. All that is required to override the right not to be harmed in a given situation is an appeal to a valid moral principle that "morally outweighs" it. Such a principle would clearly apply only to the hikers case and not to the sheep case, for the harm of death to sheep is not worse than the harm of death to wolves. Thus, this would be an appropriately asymmetrical consideration for Regan to appeal to.

Thus, the evaluation of this defense relies on the answers to two questions. (1) Is it true that the harm of the hikers' deaths is much worse than the harm of the wolves' deaths? If so, then (2) does this fact override the wolves' right not to be harmed in the hapless hikers case? Pluhar has argued that a positive answer to (1) is inconsistent with Regan's egalitarianism. As she notes, Regan repeatedly emphasizes that the inherent value of, for instance, a chipmunk is equal to that of an adult human, regardless of the comparative richness of their experiences.[23] However, I ignore this dispute and assume that the harm of death is worse for humans than for wolves. Nevertheless, I argue that the answer to question (2) is "no." The fact that death harms humans more than wolves does not warrant overriding the wolves' right not to be harmed in the hapless hikers case.

The problem is that there is no rights conflict here. If we allow that the harm to the humans outweighs the wolves' rights, even though no right of the humans' would otherwise be violated, then I do not think we are working with a worthwhile conception of rights. Consider, for example, a conflict between two humans, in which the first has a right to a good and the second lacks a right to that good. In general, the fact that the second would otherwise be harmed

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[21] Ibid., pp. 286–87.

more if that person did not receive the good is not enough to override the right of the first to the good. One of the major reasons for adopting rights theories is to avoid just this kind of utilitarian calculation, for the problem with such utilitarian calculation is that it often leaves out considerations of justice. Some famous cases include the organ harvest,[24] the small southern town,[25] the Christians in the Colosseum,[26] and Ross's good man.[27]

For instance, consider the case of the sheriff of the small southern town. He ends up framing an innocent man for a crime he did not commit because that maximizes utility. But clearly, the man's rights have been violated, and the frame-up is unjust, regardless of whether it maximizes utility. A rights theory is supposed to block this kind of utilitarian injustice. However, if it we are allowed to override rights for utilitarian reasons in the wolves case, then it seems we would be allowed to do so here as well. After all, we can always set up the story in such a way that there would be greater harm caused by not framing the innocent man than by framing him. Nevertheless, framing him would be wrong.

Thus, to return to the hapless hikers case, the fact that the wolves have the right not to be harmed is the deciding factor. To ignore the wolves' rights in favor of utilitarian considerations about the harm of death would be to allow utilitarian considerations to override rights in all sorts of cases, and often unjustly, as well. Thus, unless the hapless hikers case can be shown to be a rights conflicts case after all, it is a mistake to try to use the worse-off principle to save the hikers. In the next section, I consider an attempt to show that there actually is a rights conflict in the hapless hikers case.

VI. IN DEFENSE OF EQUAL RIGHTS III: THE RIGHT TO ASSISTANCE IN CASE OF SEVERE HARM

Although Pluhar has some criticisms of Regan's view, her view is for the most part very similar. Thus, she is also faced with the hapless hikers dilemma. However, she has argued that this dilemma can be avoided by adding a fourth right to the list of basic rights. To the basic rights (1) to (3) above, she would add the following:

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[22] Ibid., p. 324.

[23] Pluhar, *Beyond Prejudice*, pp. 288–92.

[24] The organ harvest case is discussed in Judith Jarvis Thomson's "Killing, Letting Die, and the Trolley Problem," *The Monist* 59 (1976): 204–17.

[25] The small southern town is from John Rawls, "Two Concepts of Rules," *The Philosophical Review*, 64 (1955): 3–32.

[26] The Christians in the Colosseum is from Amartya Sen, "Rights and Agency," *Philosophy and Public Affairs* 11, no. 1 (Winter 1982): 3–39.

[27] Ross' good man is from W. D. Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930), p. 35.

(4) The right to be assisted if one is in danger of severe harm, provided that the rescue would entail no serious risk or difficulty.[28]

Such a right would turn the original wolves case and the revised hapless hikers case into cases of conflicting rights. In considering what to do, in addition to the wolves' right not to be harmed, we would have to weigh the rights of the sheep and the hikers to assistance. Thus, the miniride and worse-off principles would apply. Doing so works well in the case of the hikers: the right of the wolves not to be harmed conflicts with the right of the hikers to assistance. The worse-off principle directs us to save those who would be worse off. Now, if we accept Regan's argument that the hikers will be made much worse off by death than the wolves, then the hikers are to be saved. On the other hand, if we agree with Pluhar that the harm of death for the hikers is not appreciably worse than the harm of the death for the wolves, then the miniride principle will direct us to save the larger number. Thus, if there are two hikers and one wolf, the wolf must die. But if there are two wolves and one hiker, the hiker must die. If there is an equal number of hikers and wolves, then it is permissible to save the hikers, though not obligatory.[29]

However, the recognition of this fourth right raises the problem of interventions in the wild once again, for we must now also recognize the rights of sheep to assistance when they are being hunted by wolves (and in general, the rights of all prey to assistance from their predators). However, Pluhar argues that we do not in fact have any general obligation to intervene in the wild because such interventions would cause many more and worse rights violations than they would prevent. Obviously, if we constantly interfere with predators and their prey, not only do we spend lots of our own limited resources on an impossible task, but also were we to succeed; we would likely kill off so many predators so as to disrupt the ecosystem. So, ultimately, we would harm far more individuals by a policy of general intervention between predators and their prey.[30] Thus, while the right to assistance can produce an obligation to save the hikers, it does not produce a similar obligation to save the sheep. The equal rights view is apparently saved.

I think there are two objections to this line of defense, however, one involving the obligation to intervene in nature, and the second, more serious one, regarding the strength of the right to assistance. The first objection is that even though it is clear that if we were to adopt a general policy of predator interventions, doing so would ultimately invite disaster, it is less clear that any

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[28] Pluhar presented this defense in response to an earlier draft of this paper given at the Society for the Study of Ethics and Animals at the American Philosophical Association in Chicago, April 2000.

[29] Of course, this conclusion assumes a worst-case scenario, in which the wolves cannot be stopped without killing them. This scenario is probably not realistic, but it is possible.

[30] Pluhar, *Beyond Prejudice*, p. 277.

one intervention would lead to such results. Thus, to return to the original wolves case, it could be argued that if we happen upon such a situation, then we do have an obligation to save the sheep from the wolves. We do not have any obligation to search out all such predatory events and intervene in them, but since intervention in this particular instance will not harm the overall ecosystem, it is obligatory here. Indeed, it seems as if prey animals' right to assistance would require us to assist them from their predators as much as possible without damaging the overall ecosystem. Such a requirement seems to be a problem for the view, although it could be argued that in an ideal world we would prevent animals from harming each other. Instead, we would provide predators with vegetarian food where possible, and provide them with alternative pursuits. Of course, given current scientific and other limitations, we cannot achieve this goal, but it is a goal to aim for. Thus, some might not take this objection to be very damaging to the equal rights view.[31]

The second objection is more general, and so, I think, more damaging to the equal rights view. The right to assistance in cases of severe harm, as stated above, is limited by what would be difficult or dangerous for the intervener to perform. But a little thought shows that we need to place other, fairly restrictive constraints on this right. For instance, consider the case of a doctor who has a patient who desperately needs a kidney or he will die. Fortunately for the patient, there just happens to be another patient in for a routine check-up. This patient is completely healthy, and she is a correct match for the needy patient. Given the right to assistance as stated above, the needy patient could say to his doctor, "Look, I need her kidney. Granted, she has a right not to be harmed, but I have a right to assistance. Thus, we have a rights conflict. Since I will die without the kidney, whereas undergoing the transplant will merely inconvenience her, clearly my harm outweighs hers. So, you, Doctor, must realize that the worse-off principle directs you to give me her kidney, by force if need be." Since there is nothing difficult or dangerous for the doctor in performing the transplant, it would seem that the right to assistance compels compliance with the needy patient's demand. But doing so is surely wrong. In requiring the doctor to come to one person's assistance, not only must the harm to the doctor be minimal, but the harm to any innocent individuals other than the one being assisted must be minimal as well. Thus, the right to assistance in cases of severe harm must not be as stringent as the other three basic rights.

When we consider the hikers case in this light, we realize that in order to aid the hikers we must harm other innocents, namely, the attacking wolves. It is easy to overlook this fact because in standard cases, an attacking human is not considered innocent, and so we think of the wolves as aggressors as well. But the wolves are innocent. Thus, the asymmetry I mentioned above is again a key

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[31] For instance, S. F. Sapontzis argues that we do have, in principle, a duty to prevent predation. See his *Morals, Reason, and Animals* (Philadelphia: Temple University Press, 1987), chap. 13.

element: the wolves, as moral patients, are necessarily innocent, and so receive the full protection of the basic rights without bearing any of the obligations that moral agents have. Thus, the right to assistance does not save the equal rights view.

Thus, I have shown that three plausible attempts to rescue the equal rights view from the hapless hikers case do not work. Although it is possible that there is some other plausible way to save the equal rights view, I think we must look to a different theory. In the rest of this paper, I present and defend a theory that solves the hapless hikers dilemma and still implies an obligation for most people to refrain from killing and eating animals.[32]

VII. MODERATE PERFECTIONISM

I think that the equal rights view goes wrong because it is too limited in its substantive theory of what individuals are due. The respect principle requires that individuals are due to be treated in ways that respect their inherent value. But this respect is not all that moral agents, at least, are due. In addition to recognizing rights, John Stuart Mill, to whom Regan appeals above, also recognizes deserts:

> It is universally considered just that each person should obtain that (whether good or evil) which he *deserves*, and unjust that he should obtain a good or be made to undergo an evil which he does not deserve. . . . Speaking in a general way, a person is understood to deserve good if he does right, evil if he does wrong. . . .[33]

Regan allows desert considerations to have some effect on rights. For instance, he does allow that the guilty deserve punishment, and so acknowledges that that fact can act as an override of their basic right not to be harmed.[34] Moral deserts should play a greater role, however.

Consider the distinction between moral agents and moral patients. The essential feature of a moral agent is his or her ability to engage in moral reflection that leads to moral action. But it seems inconsistent with the recognition of this ability to fail to recognize that when a moral agent acts from this ability, that this affects her moral status. After all, the point of recognizing moral agents as distinct from moral patients is to hold them morally responsible for their actions, and we do so because we think that they are better for acting morally, worse for acting immorally.

Thus, while it is appropriate to base the rights of moral patients on their

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[32] I will not, however, touch on the problems for Regan's view raised by Dale Jamieson's article, "Rights, Justice, and Duties to Provide Assistance: A Critique of Regan's Theory of Rights," *Ethics* 100 (January 1990): 349–62.

[33] Mill, *Utilitarianism*, p. 44.

[34] Regan, *The Case for Animal Rights*, p. 290.

inherent value, it is not appropriate to base the rights of moral agents on just their inherent value. Instead, we can think of the inherent value of all subjects-of-a-life as equal and in the case of moral agents, doing so furnishes a base line for their moral status. But moral status can also be affected by their moral worth.

Therefore, I suggest the following principle about how to relate the moral worth of moral agents to the rights of moral patients:

> *The Severe Harm Principle:* Special considerations aside, when we must choose between moral patients and morally deserving moral agents, and when the moral agents will be severely harmed if not aided at the expense of the moral patients, then we ought to choose to help the morally deserving moral agents even if that results in overriding the basic rights of the moral patients.

By "severe harm" I mean cases in which the moral agent will either die, lose a major limb, become paralyzed, or otherwise suffer a tremendous amount of pain or loss of normal bodily functions.

Regan labels theories of justice that base desert on the possession of certain virtues, including intellectual or artistic excellences, "perfectionism," and he castigates them: "Perfectionist theories of justice are morally pernicious, providing, as they do, the foundation of the most objectionable forms of social, political, and legal discrimination."[35]

The theory I propose is *moderate* perfectionism because it does not allow just any excellence to count as a virtue, only moral virtues. In addition, moderate perfectionism only sanctions a limited role for moral worth. It favors morally deserving moral agents over moral patients in extreme (severe harm) cases, but does not allow for just any behavior to be sanctioned. One important result is that moderate perfectionism does not significantly weaken the case for vegetarianism and the prohibition on hunting. It should be obvious that in most situations, abstaining from hunting for sport or food and abstaining from eating animals is *not* a severe harm for the moral agents involved. The few cases where either activity would be allowed are those rare situations where a moral agent is faced with dying or must kill and eat an animal in order to survive.

Unlike the equal rights theory, moderate perfectionism does not face the hapless hikers dilemma. The moderate perfectionist can accept that, special considerations aside, there is no need for moral agents to interfere in the behavior of moral patients when they are hunting other moral patients. The severe harm principle blocks the move to the hapless hikers case, however, because when the hikers are substituted for the sheep, we have now replaced moral patients with moral agents, and so a different standard applies. If the hikers are morally

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[35] Ibid., p. 234.

deserving, then they must be saved, even at the cost of overriding the wolves' rights to life.

It might be worth briefly mentioning two common objections to this theory. They are typically stated in question form: (1) what standards do we use to judge moral worth? (2) How do we know if the hikers are morally worthy or not? I think that both these questions miss the point, and can be easily answered.

The answer to the first question is that we use whatever standards we think the true theory of moral worth tells us to use, and if we are unsure, we use our best approximation. A theory of what constitutes moral worth is beyond the scope of this paper, but it should not affect the general point. When people disagree about the standards of moral worth, they disagree about which individuals are morally worthy. But they should agree, if moderate perfectionism is true, that the morally worthy deserve to be saved from the wolves.

The second question is only a problem if we think that moral theories are supposed to be like laws or codes: a system of relatively easily learnable and applicable rules to guide our actions. But some moral theories are, necessarily, more complex. They purport to tell us which general features of the world make actions wrong and which make them right. For instance, one form of utilitarianism tells us that what makes an action right is that it maximizes utility, and one simple interpretation of Kant's categorical imperative tells us (among other things) that an action is wrong if it cannot be universalized in a certain way. Neither theory requires that we know, of each possible specific action, which one maximizes utility, or which one cannot be universalized. Rights theories are no different in this respect. They tell us about general features of the world, but sometimes more knowledge is required for specific applications. This fact is important for setting general policies or making laws, but not for evaluating the truth of the theories.

VIII. MARGINAL CASES OBJECTIONS

Moderate perfectionism is not to be so easily dismissed as the perfectionist theories that Regan discounts. However, since moderate perfectionism holds that in some cases, morally worthy agents are to be preferred to moral patients, it faces objections based on marginal cases. Because Pluhar presents a clear and in-depth exposition of these cases in *Beyond Prejudice*, I focus on her discussion.

Marginal humans are humans who are not moral agents. Some of them may even lack moral patient status. Examples of marginal humans given by Pluhar include, "fetuses, children, the brain-damaged or congenitally retarded, those who suffer from insanity, and the senile," as well as infants, the autistic, and the comatose.[36]

[36] Pluhar, *Beyond Prejudice*, pp. 62, 64.

The problems from marginal cases can be easily enough illustrated by considering the hapless hikers case, but substituting for the hapless adult hikers a hapless baby "hiker" and a hapless senile hiker. Since neither the baby nor the senile hiker is a moral agent, the severe harm principle would not apply. We would be forced to let the wolves eat them, or at least have no strict duty to save them. We would also be limited in our means of saving them—we would not be allowed to harm the wolves in saving them. Clearly, some additional principles are needed. I consider the infant case first.

Pluhar grants that a plausible case can be made that future rights holders, such as human infants that will become moral agents, impose moral constraints on our present actions.[37] The moderate perfectionist can thus argue that by harming the infant, we also harm the moral agent the infant will become, and that the moral agent has a right not to be harmed. Thus, even though the infant is not a moral agent, the moral worth of the agent it will become outweighs the rights of the wolves. We, therefore, have the duty to save the hapless baby hiker from the wolves.

I also think another desert consideration is important here. In virtue of the fact that we have created moral patients with the potential of becoming morally worthy moral agents, these moral patients (our children) *deserve* the chance to become morally worthy agents. This desert is created by our special relationship to our children—that we created them—and by special facts about their nature—that they are dependent upon us for the development of their higher faculties. This consideration is important because it strengthens our obligations to infants and young children. Further, it removes any requirement on us to ponder whether a given hapless baby hiker will become a morally worthy agent or not. Whether or not the baby will become a worthy agent, it is certainly true that the baby *could* become a worthy agent if not eaten by the wolf, and all babies deserve that chance.

Pluhar has two objections to talk about the future agents that infants will become. One is that basing the protection of the infant on who the infant will become fails to respect them as individuals who have value in themselves. She writes: "Surely our repugnance concerning the mistreatment of infants has little to do with their future moral agenthood!"[38] This is a good point against theories that claim that only moral agents have inherent value, but it has little force against moderate perfectionism. Moderate perfectionism recognizes the inherent value of all subjects-of-a-life, and so it does respect infants for who they are. But moderate perfectionism also respects who they will become, and for this reason infants are valued more than moral patients that will never become moral agents.

The other objection is more technical. Pluhar points out that

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[37] Ibid., p. 111.
[38] Ibid., p. 112.

> Future rights holders constrain our present actions just in case they will exist regardless of what we now decide. For example, if we poison land and water that will be needed by those who will exist in the future, they will have been wronged as soon as they exist, but if we blow up our planet instead, we only wrong those who now exist.[39]

Suppose I am the person with the rifle who sees the hapless baby hiker being attacked by wolves. Moderate perfectionism is supposed to imply that it is my duty to protect the baby from the wolves because of who the baby will become. Unfortunately, the following reasoning seems rationally impeccable (if morally repugnant): "If I do nothing, then the wolves will kill the baby, and I will not have failed my duty to any future moral agent that the baby will become because it won't become one."

The solution is to add a counterfactual clause to the principle concerning the future moral agents that infants will become. Thus, some actions toward human infants are prohibited on the grounds that those actions will either (a) harm the moral agents the infants will become or (b) harm the moral agents the infants would have become if we had not acted as we did. This way of stating the principle prevents me from doing nothing and letting the wolves kill the infant. My passivity is forbidden because the infant would have become a moral agent if instead of remaining passive I had carried out my duty to shoot the wolves.[40]

It might be worthwhile at this point to consider how various hapless baby hikers would fare given all that I have said about moderate perfectionism. First, consider a normal infant that would grow up to be a moral agent if not for the hunting wolves. This infant is a moral patient and so not inherently more valuable than the wolves. However, because this baby *would* have become a moral agent if not for the wolves, we have a duty to protect that moral agent the baby would have become if not for the severe harm inflicted by the wolves. The baby deserves the chance to become a worthy moral agent. In addition, we have

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[39] Ibid., pp. 111–12.

[40] It also avoids Pluhar's objection that a counterfactual clause would make contraception and abstinence wrong. She writes, in *Beyond Prejudice*, on p. 112: "If we violate future beings' right to life by preventing them from coming to be, every act of contraception, every act of abstinence, is equal to murder." This is a good point, but I state the counterfactual in terms of infants, not in terms of any beings whatsoever, so it does not apply. Furthermore, I think it makes sense to state the counterfactual in terms of infants rather than beings on independent grounds: infants can be identical with the future moral agents they will become, but sperm and eggs cannot. My account takes into account what has been called the "deprivation theory" about the harm of death: death is bad (when it *is* bad) because of all the good things that the person is deprived of. I think that viewing death as an extrinsic harm because of what it deprives us of is a very reasonable response to Epicurus's puzzle about the harm of death: "Death is nothing to us; for that which is dissolved is without sensation; and that which lacks sensation is nothing to us," Epicurus, "Letter to Menoeceus," trans. C. Bailey, in *The Stoic and Epicurean Philosophers*, ed. Whitney J. Oates (New York: Modern Library, 1940), p. 35. For a full defense of this view, see Fred Feldman, *Confrontations with The Reaper* (New York: Oxford University Press, 1992), chaps. 8 and 9.

a straightforward acquired duty to protect that baby simply because it is completely dependent on adults for its survival. Finally, supposing that this baby has loving parents, its death would clearly be a severe harm to them, and so the parents' rights also override the rights of the wolves.

Now suppose instead that this hapless baby hiker is suffering from terminal cancer and will never become a moral agent regardless of any actions that we can perform to save it from the wolves. The death of this baby will not harm the future moral agent it will become, or would have become if the wolves did not kill it, because it will never become a moral agent anyway. Nevertheless, if this death would cause a severe harm to the baby's loving parents, then their rights would override the rights of the wolves, and we would have a duty to protect the baby even at the cost of killing the wolves.

Finally, consider an unloved, hapless baby hiker with terminal cancer. It may be that moderate perfectionism offers no protection to this baby. We must let this baby be killed by the wolves rather than kill any of the wolves to protect it (though we could scare off the wolves or perhaps harm them slightly). On the other hand, our acquired duties to human children do not disappear simply because we fail to love those children. Indeed, in not loving the baby it seems that at least one person is thereby failing one of his or her acquired duties to it. So, perhaps it could be argued that even in this case there is an acquired duty to save the baby from the wolves whether or not that requires overriding the wolves' rights. Personally, I am unsure about this issue. It seems that if we truly accept that the value of the wolves is equal to that of human moral patients, and if it is clear that this baby is not going to live to be a moral agent, and no other moral agent would be severely harmed by its death, then maybe we should realize that our aversion to letting this baby be killed is emotional, not moral. In any case, it is worthwhile to note that neither Pluhar's nor Regan's theories fare differently. Regan would be forced to claim that the baby must be left unprotected because the harm of death to the baby would be less than the harm of the death of any of the wolves—the wolves have a full wolfish life to lose, filled with many different and important experiences that the poor sick baby's experiences could not compare to.[41] Furthermore, any special considerations that Pluhar or Regan might come up with to save the baby would seem to be just as applicable under moderate perfectionism. After all, according to their theories the wolves are always equal to the marginal humans (including all the hapless baby hikers previously considered) because they are equal to all humans.

The other marginal case is that of former moral agents. Pluhar admits that Feinberg has made a plausible case for ascribing full basic rights to former moral agents based on respect for who they used to be:

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[41] Regan, *The Case for Animal Rights*, p. 324.

> In general, most agree that wills should be respected and promises kept. . . . If the individual never expressed any views on this subject when a full person, we do what is standardly done in cases of mental incompetence: we ask what the person probably would have wanted to be done, or what the rational wishes of the person would have been.[42]

Her only complaint is that this view does not ascribe any inherent value in who they are now. All respect for former full persons comes from the respect we have for the moral agents they used to be. But, of course, this complaint is directed at views that claim that only moral agents have inherent value. Moderate perfectionism does not make this claim. If a former moral agent is now a moral patient, she or he *does* have inherent value—that of a moral patient. But in addition to this value, former full agents also deserve respect for who they used to be (assuming they were morally worthy agents). Thus, former moral agents have moral status higher than that of mere moral patients. The hapless senile hiker can also be saved.

IX. CONCLUSION

Moderate perfectionism is the view that subjects-of-a-life have equal inherent value, but that the status of moral agents varies according to their moral worth. This view is expressed in the severe harm principle, which favors morally worthy moral agents over moral patients when their basic interests conflict. Moderate perfectionism recognizes that due to their special relationships to full moral agents, infants and former moral agents should be granted higher moral status than moral patients that never would become, or never were, moral agents. Moderate perfectionism provides more reasonable solutions to the hapless hiker cases than does the equal rights view. Finally, it is worth mentioning that moderate perfectionism is not a standard instance of a full-personhood theory. Although it recognizes the very real differences between humans and other animals, it also recognizes the inherent value in animals. It does not sanction the terrible treatment of animals that is carried on today.

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[42] Pluhar, *Beyond Prejudice*, p. 117. Her reference is to Joel Feinberg, *Harm to Others* (Oxford: Oxford University Press, 1984), chap. 2, secs 3–7.